

**RULES OF PRACTICE
AND PROCEDURE
(CHAPTER 16)**

**Kakaako Community
Development District**

Honolulu, Hawaii

**UNOFFICIAL
COMPILATION**

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KAKAAKO COMMUNITY DEVELOPMENT DISTRICT

UNOFFICIAL COMPILATION
OF THE
RULES OF PRACTICE AND PROCEDURES

This is the 1999 edition of the Unofficial Compilation of the Rules of Practice and Procedures. The Rules of Practice and Procedures are part of the Hawaii Administrative Rules (HAR), Title 15, Department of Business, Economic Development & Tourism, Subtitle 4, Hawaii Community Development Authority (HCDA), Chapter 16, Rules of Practice and Procedures in the Kakaako Community Development District.

This edition includes amendments as of October 3, 1994. See Index of Amendments for a description of the amendments. The official Rules of Practice and Procedures and its amendments are on file at the Office of the Lieutenant Governor and may also be reviewed at the HCDA office.

Jan S. Yokota
Executive Director

KAKAAKO COMMUNITY DEVELOPMENT DISTRICT

UNOFFICIAL COMPILATION
OF THE
RULES OF PRACTICE AND PROCEDURES

INDEX OF AMENDMENTS

Hawaii Administrative Rules, Title 15, Subtitle 4, Chapter 16, compiled as of September 8, 1986, has subsequently been amended by the following:

SUBJECT	EFFECTIVE DATE
Administrative Procedures and Penalties Relating to Violations of Mauka and Makai Area Rules	October 3, 1994

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Historical Note: This chapter is based substantially upon General Rules and Procedures of the Hawaii Community Development Authority. [Eff 11/20/77; R 6/25/81]

HAWAII ADMINISTRATIVE RULES

TITLE 15
DEPARTMENT OF BUSINESS, ECONOMIC
DEVELOPMENT & TOURISM

SUBTITLE 4
HAWAII COMMUNITY DEVELOPMENT AUTHORITY

CHAPTER 16
RULES OF PRACTICE AND PROCEDURE

SUBCHAPTER 1

RULES OF GENERAL APPLICABILITY

§15-16-1 Purpose. This chapter governs procedures before the Hawaii community development authority under chapter 206E, HRS, and shall be construed to effectuate the purpose of the chapter and to secure the just and efficient determination of every proceeding. [Eff 6/25/81, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-16-2 Definitions. As used in this chapter, except as otherwise required by context:

"Authority" is as defined by section 206E-2, HRS;

"Chairperson" means the duly elected chief presiding officer of the authority and in the absence or incapacity of the chairperson, the vice chairperson;

"Designated representative" means any employee or officer of the department of finance, department of planning and economic development, department of accounting and general services, and department of social services and housing, designated by the respective department head to represent the head at any authority meeting or proceeding with all of the rights and privileges of full membership, provided that designation for representation at any proceeding shall not be made except for the entire duration thereof;

"Executive director" means the chief executive officer of the authority who is appointed by the authority and who serves at the pleasure of the authority;

"Kakaako community development district" as defined by section 206E-32, HRS;

"Meetings" means the convening of the authority for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter under the supervision and control of the authority;

"Petitioner" means any person or agency who or which petitions or on whose behalf a petition is made to the authority and concerning which the authority may take action under statutory or other powers granted to it;

"Proceeding" means to any matter brought before the authority which is given consideration in light of the community development goals of providing a comprehensive plan for the Kakaako district and future community development districts designated by the legislature. [Eff 6/25/81, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-16-3 The authority. (a) The office of the authority is in Honolulu, Hawaii. All communications to the authority shall be addressed to the authority's office, unless otherwise directed.

(b) The office of the authority shall be open from 7:45 a.m. to 4:30 p.m. of each weekday, unless otherwise provided by statute or executive order. [Eff 6/25/81, am 5/31/84, comp 9/8/86] (Auth: HRS §§ 91-2, 206E-4) (Imp: HRS §§206E-3, 206E-4)

§15-16-4 Meetings. (a) The authority may meet and exercise its powers in any part of the State of Hawaii. All meetings of the authority shall be open to the public, except executive meetings. Public notice of all meetings, except emergency meetings, shall be made pursuant to section 92-7, HRS. The parliamentary procedure to be utilized by the authority in the conduct of its meetings, shall be based on Robert's Rules of Order, Newly Revised, 1971.

(b) Regular meetings shall be held at the regular meeting place of the authority on the first Wednesday of the month, provided that if such date is a legal holiday, then the regular meeting for such date shall be held on the date immediately following the holiday. Any and all business of the authority may be transacted at regular meetings. Notices of meetings of the authority shall:

- (1) Be sent to those requesting to be on the mailing list for this purpose and other interested parties;
- (2) Be posted in the office of the authority; and
- (3) If possible, be distributed to the news media.

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The authority may hold its regular meetings on other than the stipulated dates, times, and places, provided that proper notice be given of the changes.

(c) Special meetings may be held at such times and places as the authority may require, as called by the chairperson at such time and place as the chairperson may determine, and must be called by the chairperson upon the written request of three or more members of the authority filed with the executive director. Written notice of any special meeting must be given to each member of the authority at least seventy-two hours prior to the date of the special meeting. At the special meeting, no business shall be considered other than as designated in the notice.

(d) The authority may hold an executive meeting closed to the public upon a two-thirds affirmative vote of the members present at the meeting. The reason for holding the executive meeting and the vote of the members shall be recorded and entered into the minutes of the meeting. An executive meeting may be held for any of the following purposes:

- (1) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against such individuals, where consideration or matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held;
- (2) To deliberate concerning the authority of persons designated by the authority to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations;
- (3) To consult with the authority's attorney;
- (4) To investigate proceedings regarding criminal misconduct; and
- (5) To consider sensitive matters related to public safety or security.

No ruling, rule, contract, appointment, or decision shall be finally acted upon in an executive meeting.

(e) The authority may hold an emergency meeting upon a finding that an imminent peril to public health, safety, or welfare exists, provided that:

- (1) The authority states in writing the reasons for its finding;
- (2) Two-thirds of the members to which the authority is entitled agree that the findings are correct and an emergency exists;
- (3) An emergency agenda and the findings are filed with the authority's office; and

- (4) Persons on the mailing list are contacted by mail or telephone as soon as practicable. [Eff 6/25/81, am and comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§92-3, 92-4, 92-5, 92-8)

§15-16-5 Quorum and number of votes necessary for a decision. The power of the authority shall be vested in the members of the authority in office from time to time. A quorum shall consist of a majority of all the members the authority is entitled to by statute, and the affirmative vote of at least that number of members shall be necessary to make any action of the authority valid. [Eff 6/25/81, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §92-15)

§15-16-6 Minutes. (a) The authority shall maintain written minutes of all its meetings, setting forth an accurate record of votes and actions taken. Unless otherwise required by law, neither a full transcript nor a recording of the meeting shall be required, but the written minutes shall give a true reflection of the matters discussed at the meeting and the views of the members. The minutes shall include, but are not limited to:

- (1) The date, time, and place of the meeting;
- (2) The members of the authority recorded as either present or absent;
- (3) The substance of all matters proposed, discussed, or decided; and a record of any votes taken by the individual members; and
- (4) Any other information that any member of the authority requests be included or reflected in the minutes.

(b) The minutes shall be public record and shall be available within thirty days after the meeting, except where such disclosure would be inconsistent with section 92-5, HRS; provided that minutes of executive meetings may be withheld for so long as their publication would defeat the lawful purpose of the executive meeting, but no longer. [Eff 6/25/81, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §92-9)

§15-16-7 Authentication of authority actions. All actions, decisions, and orders taken shall be signed by the members of the authority acting in such proceedings or by the chairperson upon delegation by the members acting in the proceeding. Official copies of decisions, orders, and other authority actions may be distributed under the signature of the chairperson of the authority or a person delegated by

the chairperson. [Eff 6/25/81, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-16-8 Submittals and requests. All submittals and requests requiring authority action which may be taken at an authority meeting shall be made in writing and filed with the office of the authority in Honolulu, Hawaii, ten days before the scheduled meeting, or by order of the authority. Requests for public information, copies of official documents, or opportunity to inspect public records shall be made in writing to the authority office or in person at said office. [Eff 6/25/81, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-16-9 Removal of persons from meetings. The authority may remove any person or persons who wilfully disrupt a meeting to prevent and compromise the conduct of the meeting. [Eff 6/25/81, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-16-10 Delegation of administrative duties.
(a) The authority may delegate to the executive director such power or authority vested in the authority as it deems reasonable and proper for the effective administration of chapter 206E, HRS, except the power to adopt, amend, or repeal rules.

(b) The authority, by a majority of the members to which it is entitled, may appoint a hearings officer to conduct a proceeding as provided in this chapter and pursuant to the requirements of chapter 91, HRS. [Eff 6/25/81, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-16-11 Duties of executive director. The executive director is the person appointed by the authority to serve as the chief executive officer of the authority. The executive director shall be directly responsible to the authority, and shall have control of and responsibility for the execution of the authority's policies, the administration of its affairs, and the employment and supervision of its personnel. At each meeting of the authority, the executive director shall furnish its members with such information and make such recommendations as shall be necessary to effect the purposes of the authority and for the proper administration of its affairs. The executive director shall authorize and certify payrolls, requisitions,

invoices, and other documents essential to the proper administration of the authority. [Eff 6/25/81, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §206E-3)

§15-16-12 Public records. (a) The term "public records" as used in this chapter is defined as in section 92-50, HRS, and shall include all maps, rules, written statements of policy or interpretation formulated, adopted, or used by the authority in its functions, all decisions, orders, minutes of the authority's meetings, and records of any docket on file with the authority but shall not include records which invades the right of privacy of an individual.

(b) All public records shall be available for inspection in the office of the authority during established office hours unless public inspection of the records is in violation of any state or federal laws.

(c) Public records printed or reproduced by the authority shall be given to any person requesting the same and paying the reasonable cost thereof.

(d) Requests for public information, for permission to inspect official records, or for copies of public records shall be handled expeditiously. [Eff 6/25/81, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§92-50, 92-51)

§15-16-13 to §15-16-15 (Reserved).

SUBCHAPTER 2

PROCEEDINGS BEFORE THE AUTHORITY

§15-16-16 General rule. All persons and parties shall comply with these rules of practice and procedures when appearing before the authority. Procedures to be followed by the authority, unless specifically prescribed in this chapter or by chapters 91 and 92, HRS, shall be such as in the opinion of the authority will best serve the purposes of the proceeding. The authority may waive or suspend the provisions of this chapter. [Eff 6/25/81, am and comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-16-17 Appearances before the authority. (a) Any party to any proceeding before the authority may appear pro se or an individual may appear as an authorized

representative of a partnership, corporation, trust, or association. An officer or employee of an agency of the state or a political subdivision may represent the agency in any proceeding before the authority.

(b) When an individual acting in a representative capacity appears in person or signs a paper submitted to the authority, the personal appearance or signature of that individual shall constitute a representation to the authority that under the provisions of this chapter and the applicable statute, the individual is authorized and qualified to represent that particular person or entity. The authority may at any time require any person transacting business with the authority in a representative capacity to authenticate such authority and qualification to act. [Eff 6/25/81, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 91-9, 206E-4)

§15-16-18 Disqualification of authority's members. Any party to a hearing up to five days before the proceeding may file an affidavit that one or more of the members has a personal bias or prejudice. Every such affidavit shall state the facts and reasons for the belief that bias or prejudice exists. The member against whom the affidavit is filed may answer the affidavit in which case the remaining members shall decide by a majority of all the members to which the authority is entitled whether that member should be disqualified from the proceeding. If the member chooses to be disqualified, the member shall file with the chairperson a certificate requesting disqualification stating the member's inability to decide said matter with impartiality. [Eff 6/25/81, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-16-19 Filing of papers. (a) All requests, submittals, petitions, reports, maps, exceptions, plans, memoranda, and other papers required to be filed with the authority pursuant to any proceeding shall be filed with the office of the authority at Honolulu, Hawaii, within the time limits prescribed by law, rules, or by order of the authority. The date on which the papers are received by personal service or by mail shall be regarded as the date of filing.

- (b) All papers filed with the authority shall be:
- (1) Written in black ink, typewritten, mimeographed, or printed;
 - (2) Plainly legible; and
 - (3) On strong, durable paper no larger than 8-1/2" x 14" in size, except that maps, charts, tables, and

other like documents may be larger, folded to the size of the papers to which they are attached.

(c) Reproduction may be by any process, provided all copies are clear and permanently legible.

(d) All papers filed by any person or agency in any proceeding shall state on the first page the name, mailing address, and business telephone number, if any, of the individual or individuals who may be served with any documents filed in the proceeding.

(e) The original of each paper shall be signed in ink by the party.

(f) All papers must be signed by the party or a representative. The signature constitutes a verification that the paper has been read and that to the best knowledge, information, and belief, of that person:

(1) Every statement contained therein is true;

(2) No such statement is misleading; and

(3) That it is not interposed for delay.

(g) Unless otherwise required by this chapter or the authority, there shall be filed with the authority an original and eleven copies of each paper. Additional copies shall be promptly provided if requested by the executive director or chairperson. [Eff 6/25/81, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 91-9, 206E-4)

§15-16-20 Amendment of papers and dismissal. If any paper filed with the authority is not in substantial conformity with the applicable rules of the authority, on its own motion or on motion of any party, the authority may strike such paper or require its amendment. If amended, the paper shall be effective as of the date of the receipt of the amendment. [Eff 6/25/81, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-16-21 Retention of papers. All papers filed with the authority shall be retained by the authority in its files. However, the chairperson may permit the withdrawal of original copies of papers upon submission of properly authenticated copies to replace the original papers. [Eff 6/25/81, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-16-22 Authority decision. Copies of published materials shall be available for public inspection in the office of the authority or may be obtained upon request and upon the payment of a reasonable charge, if any. [Eff

6/25/81, am and comp 9/8/86] (Auth: HRS §§91-2, 206E-4)
(Imp: HRS §§91-2, 206E-4)

§15-16-23 Continuances or extensions of time. Whenever a person or agency is required to take action within the period prescribed or allowed by this chapter, notice given hereunder, or by an order, the presiding officer may:

- (1) With or without notice, extend such period before the expiration of the prescribed period; or
- (2) Upon motion, permit the act to be done after the expiration of a specified period where the failure to act is reasonably shown to be excusable. [Eff 6/25/81, comp 9/8/86] (Auth: HRS §§91-2, 206E-4)
(Imp: HRS §§91-2, 206E-4)

§15-16-24 Contested cases. Procedures to be followed in contested cases shall, unless otherwise prescribed by law or in these rules, comply with chapters 91 and 92, HRS. [Eff 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-16-25 (Reserved).

SUBCHAPTER 3

RULE MAKING PROCEDURE

§15-16-26 Initiation of rule making procedure.

(a) The adoption, amendment, or repeal of any rule of the authority may be made by the authority on its own motion, or by petition of any interested person or agency. Petitions for rule making filed with the authority shall become matters of public record.

(b) Petitions for rule making shall conform to the requirements of section 15-16-19 and shall contain:

- (1) The name, address, and telephone number of each petitioner;
- (2) The signature of each petitioner;
- (3) A draft or the substance of the proposed rule or amendment or a designation of the provisions the repeal of which is desired;
- (4) A statement of the petitioner's interest in the subject matter; and

(5) A statement of the reasons in support of the proposed rule, amendment, or repeal.

(c) The authority, within thirty days after the filing of a petition for rule making, shall either deny the petition or initiate rule making proceedings. [Eff 6/25/81, comp 9/8/86] (Auth: HRS §§91-6, 206E-4) (Imp: HRS 91-6, 206E-4)

§15-16-27 Denial of petition. Any petition that fails in any material respect to comply with the requirements of this chapter or fails to disclose sufficient reasons to justify the institution of public rule making proceedings shall not be considered by the authority. The authority shall notify the petitioner in writing of such denial, stating the reasons therefor. Denial of a petition shall not operate to prevent the authority from acting, on its own motion, upon any matter disclosed in the petition. The petitioner may seek judicial review of denial pursuant to section 91-14, HRS, and applicable rules of court. [Eff 6/25/81, comp 9/8/86] (Auth: HRS §§91-12, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-16-28 Acceptance of petition. If the authority determines that the petition is in order and that it discloses sufficient reasons in support of the proposed rule making to justify the institution of rule making proceedings, the procedures to be followed shall be as set forth in this chapter and the applicable statutes and laws. [Eff 6/25/81, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 91-6, 206E-4)

§15-16-29 Notice of public hearing. (a) Whenever pursuant to a petition or upon its own motion, the authority proposes to adopt, amend or repeal a rule or plan, a notice of proposed rule making shall be published at least once in a newspaper of general circulation in the state and if such action shall affect a county, publication shall be made at least once in the newspaper which is printed and issued at least twice weekly in that county; and such notice shall also be mailed to all persons or agencies who have made timely written requests for advance notice of the authority's rule making proceedings. All notices shall be published at least twenty days prior to the date set for public hearing.

(b) A notice of the proposed adoption, amendment, or repeal of a rule, or plan shall include:

- (1) A statement of the date, time and place where the public hearing will be held;
- (2) Reference to the authority under which the adoption, amendment, or repeal of the rule, or plan is proposed; and
- (3) A statement of the substance of the proposed rule making. [Eff 6/25/81, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-3, 92-41)

§15-16-30 Authority hearing procedures. (a) The public hearing before the authority shall be presided over by the chairperson, or, in the chairperson's absence the vice chairperson, or, in the vice chairperson's absence by another member designated by the authority. Interested individuals and agencies shall have a reasonable opportunity to offer testimony with respect to the matters specified in the notice of hearing. A clear and orderly record shall be obtained. The presiding officer shall be authorized to administer oaths or affirmations and to take all other actions necessary to the orderly conduct of the hearing.

(b) Each hearing shall be held at the time and place set in the notice of hearing but may at such time and place be continued by the presiding officer from day to day or adjourned to a later date or to a different place without notice other than the announcement at the hearing.

(c) At the commencement of the hearing, the presiding officer shall outline briefly the procedure to be followed. Testimony shall then be received with respect to the matters specified in the notice of hearing in such order as the presiding officer shall prescribe.

(d) To avoid unnecessary cumulative evidence, the presiding officer may limit the number of witnesses or the time for testimony upon a particular issue.

(e) Any person who willfully disrupts a hearing to prevent or compromise the conduct of the hearing shall be removed from the hearing room.

(f) Before proceeding to testify, witnesses shall state their name, address, and who they represent at the hearing, and shall give such information respecting their appearance as the presiding officer may request. The presiding officer shall confine the testimony to the matters for which the hearing has been called but shall not apply the technical rules of evidence. Witnesses shall be subject to questioning by the members of the authority or by any other representative of the authority. Cross examination by other persons or agencies shall be permitted only at the discretion of the presiding officer.

(g) All interested persons or agencies shall be afforded an opportunity to submit data, views, or arguments

orally or in writing that are relevant to the matters specified in the notice of hearing. The period for filing written comments or recommendations may be extended beyond the hearing date by the presiding officer for good cause. An original and eleven copies shall be required when submitting written comments, recommendations, or replies.

(h) Unless otherwise specifically ordered by the authority, testimony given at the public hearing shall not be reported verbatim. All supporting written statements, maps, charts, tabulations, or similar data offered in evidence at the hearing, and which are deemed by the presiding officer to be authentic and relevant, shall be received in evidence and made part of the record. Unless the presiding officer finds that furnishing copies is impracticable, twelve copies of the exhibits shall be submitted. [Eff 6/25/81, am and comp 9/8/86] (Auth: HRS §§91-2, 91-6, 206E-4) (Imp: HRS §§91-2, 91-6, 206E-4)

§15-16-31 Authority action. The authority shall consider all relevant comments and material of record before taking final action in a rule making proceeding. Final action shall be taken within a reasonable amount of time following:

- (1) The final public hearing; or
- (2) The expiration of any extension period for submission of written comments or recommendations, whichever occurs later. [Eff 6/25/81, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 91-3, 206E-4)

§15-16-32 Emergency rule making. If the authority finds that an imminent peril to public health or safety requires the adoption, amendment, or repeal of any rule upon less than twenty days notice, and states in writing its reasons for such finding, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing as it finds practicable to adopt an emergency rule to be effective for a period not longer than one hundred twenty days without renewal. [Eff 6/25/81, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §91-3)

§15-16-33 to §15-16-39 (Reserved).

SUBCHAPTER 4

DECLARATORY RULINGS

§15-16-40 Petition. Any interested person may petition the authority for a declaratory order as to the applicability of a statutory provision or any rule or order of the authority. [Eff 1/21/83, comp 9/8/86] (Auth: HRS §§91-8, 206E-4) (Imp: HRS §§91-8, 206E-4)

§15-16-41 Submission of petition. (a) The petition shall be submitted to the office of the authority.

(b) In addition to the requirements contained in section 15-16-19, the petition shall set forth the following:

- (1) Designation of the specific statute, rule, or order in question.
- (2) A complete statement of facts.
- (3) A statement of the nature of petitioner's interest, including the reasons for submitting the petition.
- (4) A statement of the position or contention of the petitioner.
- (5) A full discussion of the reasons, including any legal authorities, in support of petitioner's position or contention. [Eff 1/21/83, comp 9/8/86] (Auth: HRS §§91-8, 206E-4) (Imp: HRS §§91-8, 206E-4)

§15-16-42 Rejection of petition. The authority may reject any petition which does not conform to the foregoing requirements. [Eff 1/21/83, comp 9/8/86] (Auth: HRS §§91-8, 206E-4) (Imp: HRS §§91-8, 206E-4)

§15-16-43 Refusal to issue declaratory ruling.

(a) The authority may refuse to issue a declaratory ruling for good cause.

(b) Without limiting the generality of the foregoing, the authority may so refuse where:

- (1) The question is speculative or purely hypothetical and does not involve existing fact, or facts which can reasonably be expected to exist in the near future.
- (2) The petitioner's interest is not a type which would give him standing to maintain an action if he were to seek judicial relief.
- (3) The issuance of the declaratory ruling may adversely affect the interests of the State, the

authority, or any of their officers or employees, in litigation which is pending or may reasonably be expected to arise. [Eff 1/21/83, comp 9/8/86] (Auth: HRS §§91-8, 206E-4) (Imp: HRS §§91-8, 206E-4)

§15-16-44 Referral to other agencies. Where a question of law is involved, the authority may refer the matter to the attorney general. The authority may also obtain assistance from other agencies, when necessary or desirable. [Eff 1/21/83, comp 9/8/86] (Auth: HRS §§91-8, 206E-4) (Imp: HRS §§91-8, 206E-4)

§15-16-45 Notification of petitioner. The petitioner shall be informed by the authority by certified mail upon the disposition of the petition. [Eff 1/21/83, comp 9/8/86] (Auth: HRS §§91-8, 206E-4) (Imp: HRS §§91-8, 206E-4)

§15-16-46 Status of orders. Orders disposing of petitions have the same status as other authority orders. Orders shall be applicable only to the fact situation alleged in the petition or set forth in the order. They shall not be applicable to different fact situations or where additional facts not considered in the order exist. [Eff 1/21/83, comp 9/8/86] (Auth: HRS §§91-8, 206E-4) (Imp: HRS §§91-8, 206E-4)

§15-16-47 Time limit. The authority shall render a decision on a petition for declaratory ruling upon receipt of a complete petition but in no event later than the second regular monthly meeting at which it could have properly noticed consideration of the petition on its agenda. [Eff 1/21/83, comp 9/8/86] (Auth: HRS §§91-8, 206E-4) (Imp: HRS §§91-8, 206E-4)

§15-16-48 and §15-16-50 (Reserved).

SUBCHAPTER 5

ZONING VARIANCE

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§15-16-51 Informal discussion. A person seeking a variance from provisions of the Kakaako community development district plan or rules with respect to a parcel or parcels of land may discuss the matter informally with the executive director or a designated representative of the executive director. [Eff 1/21/83, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-16-52 Application. A person may apply to the authority for a variance by completing the appropriate "Application for Variance" form. The completed application shall be filed at the office of the Hawaii community development authority with the proper signatures, exhibits and data required by the application form. [Eff 1/21/83, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-16-53 Fee. (a) The filing fee of two-hundred dollars plus the cost of publishing the public hearing notice shall be submitted with the variance application. The cost of the hearing notice shall be refunded only if the public hearing notice has not been submitted to the publishing agency.

(b) Government agencies are exempt from the application fee. [Eff 1/21/83, am and comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-16-54 Executive director's report. (a) Following a determination that the application is complete, including payment of the fee, the submittal of the required information and drawings, and the authorization of the fee owner of the parcel (deed holder) or the owner of the right to use the property, the executive director shall initiate an investigation of the facts upon which the variance request is based. This investigation may include a visit to the site and such record searches as are necessary.

(b) The executive director shall prepare a report for the authority which shall include a finding of facts, justification statements made by the applicant, pertinent plan and rule references, violation notices if any, and an analysis relating the facts found to the variance criteria specified by the Kakaako community development district rules.

(c) The report shall include the executive director's recommended action based on the analysis. [Eff 1/21/83, am and comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-16-55 Hearing. (a) The executive director shall place the matter on the agenda of the authority, publish a public hearing notice and send a copy of the report to each authority member. The applicant shall be sent a notice of the public hearing and a copy of the executive director's report, and requested to be present at the public hearing.

(b) Notice of the public hearing shall be published at least once in a daily newspaper of general circulation in the state, not less than twenty days prior to the hearing.

(c) The public hearing shall afford interested persons a reasonable opportunity to be heard and to present evidence and argument either for or against the request. [Eff 1/21/83, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-16-56 Decision. (a) If the authority finds that a requested variance meets the applicable variance conditions set forth in section 15-22-14 of the Kakaako community development district rules, it shall grant the variance, and may attach to its approval such terms and conditions as it deems appropriate.

(b) If the authority cannot find that a requested variance meets the applicable variance conditions, it shall deny the variance. [Eff 1/21/83, am and comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-16-57 Examination of evidence. (a) Whenever the decision of the authority is adverse to the applicant, and all authority members have not heard and examined all of the evidence, a proposal for decision must be prepared and served upon the applicant. Said proposed decision shall contain a statement of reasons, including a determination of each issue of fact or law necessary to the proposed decision.

(b) The applicant shall be afforded an opportunity to file exceptions to the proposed decision and present argument to the authority. [Eff 1/21/83, comp 9/8/86] (Auth: HRS §§91-2, 91-11, 206E-4) (Imp: HRS §§91-2, 91-11, 206E-4)

§15-16-58 Orders. A decision of the authority is effective upon signing of the written order. [Eff 1/21/83, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-16-59 Variance term. A variance, when approved, runs with the land, except in those cases where the authority has qualified its approval by attaching conditions which limit the term of the variance. [Eff 1/21/83, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-16-60 through §15-16-65 (Reserved).

SUBCHAPTER 6

VARIANCE RECONSIDERATION

§15-16-66 Types of reconsideration. The authority may reconsider its own action in approving or denying a variance application as follows:

- (1) The authority may entertain a request for reconsideration of a decision and order if a written petition is received within thirty calendar days from the date the decision and order was received by the applicant.
- (2) The authority may reconsider a decision and order at any time if it has reason to believe that the findings of material fact in a case may have changed to the extent that they would no longer support its findings or if the executive director reports to them that an applicant has not complied with the conditions attached to a variance decision and order. [Eff 1/21/83, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-16-67 Petition. A written petition for reconsideration shall include new supporting evidence or new justification for the action sought by the petitioner which was not included in the record on which the authority made its decision. [Eff 1/21/83, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-16-68 Executive director's action. (a) The receipt of the petition shall be in writing and the petitioner shall be informed whether the petition was received within the prescribed thirty days and will be transmitted to the authority, or whether it was not received within the required period and will not be transmitted to the authority.

(b) Other persons interested in the case, shall also be informed of the petition and notified that they may submit written testimony concerning the petition within ten calendar days.

(c) Within thirty days of receipt of a petition, the executive director shall transmit the request to the authority for action together with copies of the authority decision and order, appropriate minutes, written testimony from persons interested in the case if any, and a review of the record to determine whether in the executive director's opinion the evidence or justification furnished is already in the record, and without any recommendations of action. [Eff 1/21/83, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-16-69 Authority action. Upon receiving the petition and associated papers from the executive director, the authority shall examine the documents and determine whether the petition appears to include new evidence or justification. If new evidence or justification is apparent, the authority shall place the case on the agenda for its next meeting; if not, the authority shall ask the executive director to inform the petitioner of its findings and that the petition is denied. [Eff 1/21/83, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, p:6E-4)

§15-16-70 Reconsideration. Upon granting a request for reconsideration, the matter shall be deemed reopened for the limited purpose of hearing evidence and justifications as set forth in the request for reconsideration. The petitioner shall be notified by certified mail of the time and place that the reconsideration is scheduled. Interested persons shall be notified by first class mail. [Eff 1/21/83, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-16-71 Changed conditions or non-compliance.
(a) At the authority's request, or the executive director's own initiative, the executive director shall prepare a report regarding any variance in force when there is reason to believe that there has been a change of the conditions of material fact on which the variance decision and order were based, or that conditions attached to a variance approval have not been complied with. Copies of the report shall be sent to the authority, and the matter shall be placed on the authority's meeting agenda.

(b) In the same manner and at the same time it examines a reconsideration petition for new evidence or justification, the authority will examine the executive director's report and decide whether the evidence presented warrants reconsideration of its decision and order. If so, a new public hearing on the case will be noticed following the same procedure as set forth in §15-16-55. [Eff 1/21/83, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-16-72 through §15-16-75 (Reserved).

SUBCHAPTER 7

APPEAL FROM ACTIONS OF THE EXECUTIVE DIRECTOR

§15-16-76 Application. A person appealing from an action of the executive director in the administration of the Kakaako community development district plan or rules shall submit a written petition to the authority setting forth:

- (1) Appellant's name, mailing address, and telephone number;
- (2) Identification of the property and the petitioner's interest therein;
- (3) Designation of the specific applicable provision of the plan or rules;
- (4) The action of the executive director that is being appealed;
- (5) All pertinent facts; and
- (6) Reasons for the appeal, including a statement as to why the applicant believes that the executive director's action was based on an erroneous finding of a material fact, or that the executive director acted in an arbitrary or capricious manner, or that the executive director manifestly abused his/her discretion. [Eff 1/21/83/ comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-16-77 Appeal deadline. The authority shall not entertain a petition appealing an action of the executive director unless a written petition is received within thirty calendar days from the date of receipt of the written decision of the executive director. [Eff 1/21/83, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-16-78 Executive director's action. (a) Within ten days after receipt of an appeal petition, the executive director shall forward a copy of the petition to the department of the attorney general and request appointment of a deputy to defend the executive director. The executive director shall also forward copies of the petition to the authority.

(b) The deputy attorney general representing the executive director shall prepare a reply to the charges made by appellant's petition, and copies thereof shall be mailed

to the authority and to the appellant. As soon as this has been accomplished, but no later than forty-five days from receipt of the petition, the executive director shall place the matter on the agenda of the authority for a meeting date agreeable to both the appellant and the deputy attorney general representing the executive director. [Eff 1/21/83, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-16-79 Hearing. (a) A public hearing notice shall be published, and hearing requirements of sec. 15-16-55 shall be satisfied.

(b) At the public hearing, both sides shall be entitled to call witnesses, to cross-examine, and to make legal arguments. The public hearing shall afford the appellant and all other interested persons a reasonable opportunity to be heard and to present evidence and argument either for or against the appeal. The hearing shall be conducted in conformity with the applicable provisions of sections 91-9, 91-10, and 91-11, Hawaii Revised Statutes. [Eff 1/21/83, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-16-80 Consultation by authority members prohibited. No authority member shall consult any person on any issue of fact regarding the appeal except upon notice and opportunity for all parties to participate. [Eff 1/21/83, comp 9/8/86] (Auth: HRS §§91-2, 91-13, 206E-4) (Imp: HRS §§91-2, 91-13, 206E-4)

§15-16-81 Decision. An appeal shall be sustained only if the authority finds that the executive director's action was based on an erroneous finding of a material fact, or that the executive director had acted in an arbitrary or capricious manner or had manifestly abused his/her discretion. [Eff 1/21/83, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-16-82 Order. (a) The authority shall require the prevailing party to draft an order embodying the authority's decision and order, including findings of fact and conclusions of law, following the normal format for such authority documents. The other party shall review the draft order for approval as to form, and be allowed to present exceptions thereto and oral argument in support of said exceptions, and the authority shall then consider and adopt

the appropriate Decision and Order including Findings of Fact and Conclusions of Law.

(b) Following the authority's adoption of the order, the executive director shall promptly send a copy of the order by certified mail to the appellant. [Eff 1/21/83, comp 9/8/86] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-16-83 through §15-16-89 (Reserved).

SUBCHAPTER 8

ADMINISTRATIVE PROCEDURES AND PENALTIES RELATING TO VIOLATIONS OF MAUKA AND MAKAI AREA RULES

§15-16-90 Applicability. This subchapter is promulgated for the enforcement of the planning and zoning rules pertaining to real property located within the mauka and makai areas of the Kakaako community development district. Requirements of the mauka area rules, chapter 15-22, and the makai area rules, chapter 15-23, shall be enforced by the authority and penalties for violations shall be imposed as set forth in this subchapter. [Eff 10/3/94] (Auth: HRS §§91-2, 206E-4, 206E-22) (Imp: HRS §§206E-5, 206E-7, 206E-22)

§15-16-91 Definitions. As used in this subchapter, the following words and terms shall have the following meanings unless the context shall indicate another or different meaning or intent:

"Days" means calendar days unless otherwise specified.

"Repeated violation" means a recurrence of the same type of violation or of the same permit condition, at the same location, by any one or more previous violators.

"Violation" means nonconformance with respect to use, development standards, permit conditions or associated misrepresentations as follows:

- (1) USE - Utilization of any structure or land for an activity not permitted in a land use zone pursuant

to provisions of subchapters 1 and 2 of chapters 15-22 or 15-23.

- (2) DEVELOPMENT STANDARDS - Location or construction of any structure inconsistent with standards and procedures prescribed in subchapters 1, 3, 4, and 5 of chapters 15-22 or 15-23.
- (3) PERMIT CONDITIONS - Breach of a term or condition of any permit or other authorization issued pursuant to chapters 15-22 or 15-23.
- (4) MISREPRESENTATIONS - Misrepresentation of fact on any application, plan or other information submitted to obtain any authorization or permit, including but not limited to representations made in affidavits, recorded covenants, parking agreements, and joint development agreements.

"Violator" means any person, persons, organization, partnership, firm, association, trust, estate, public or private corporation, or any other legal entity that has an interest in the property on which the violation occurs. [Eff 10/3/94]
(Auth: HRS §§91-2, 206E-4, 206E-22) (Imp: HRS §§206E-5, 206E-7, 206E-22)

§15-16-92 Issuance of notice of violation and citation. (a) Upon determination of a violation, the executive director may issue a notice of violation and citation.

(b) Service of notice of violation and citation shall be in person or by certified mail, restricted delivery, return receipt requested.

(c) The notice of violation and citation shall include but is not limited to the following:

- (1) Date of the notice;
- (2) Name and address of the violator;
- (3) Nature of the violation;
- (4) The section number of the provision or rule, or the number of the permit which has been violated; and
- (5) Location and time of violation.

(d) The notice of violation and citation may require the violator to do any or all of the following:

- (1) Cease and desist from the violation;
- (2) Correct the violation at the violator's own expense on or before a date specified in the citation;

- (3) Pay a fine as determined in accordance with section 15-16-94 in the manner, place, and date specified in the notice if the violation persists after the date specified to correct the violation;
- (4) Pay a fine as determined in accordance with section 15-16-94 for each day in which the violation persists after the date specified to correct the violation; and
- (5) Pay for administrative costs incurred by the authority in the preparation of the notice of violation and citation and the collection of fines.

(e) The notice of violation and citation shall advise the violator that appeals shall be filed within thirty (30) days after the date of its receipt. The notice shall advise the violators of the appeal process and that variance procedures are available. [Eff 10/3/94] (Auth: HRS §§91-2, 206E-4, 206E-22) (Imp: HRS §§206E-5, 206E-7, 206E-22)

§15-16-93 Time period for compliance. (a) When determining the corrective action to be taken and a reasonable deadline to correct the violation, the executive director shall use the following schedule as a guide:

Schedule for Correction of Violations

<u>Type of Violation</u>	<u>Initial Violation</u>	<u>Repeated Violation</u>
Use	15 days	7 days or less
Development Standard	30 days	15 days or less
Permit Condition	30 days	15 days or less

- (b) This schedule is only a guide and may be modified in consideration of the following:
- (1) The type and the degree of the violation, whether it is a repeated violation, and the number of violations cited in the citation;
 - (2) Whether the violation poses a threat or potential threat to human health and safety;
 - (3) The intent of the violator to comply, if it has been expressed to the executive director;

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- (4) Procedural requirements for obtaining a permit or authorization to carry out corrective action;
- (5) The complexity of the corrective action required, including construction requirements and the legal prerogatives of landlords and tenants; and
- (6) Any other circumstances beyond the control of the violator. [Eff 10/3/94] (Auth: HRS §§91-2, 206E-4, 206E-22) (Imp: HRS §§206E-5, 206E-7, 206E-22)

§15-16-94 Administrative fines. (a) If a violation is not corrected by the date specified in the notice, the violator shall pay to the authority a fine prescribed by the executive director in accordance with subsections (b) through (d) in an amount not to exceed \$500.

(b) In determining the amount of the fine, the executive director shall consider the following:

- (1) The nature and degree of the violation;
- (2) Whether the violation involves a threat to public health and safety;
- (3) Whether there is income derived from the violation;
- (4) Whether there are multiple violations; and
- (5) Whether it is a repeated violation as defined in section 15-16-91.

(c) The fine for an initial violation shall be in accordance with the following schedule:

Development Standards/Permit		<u>Conditions</u>
<u>Use</u>		
<u>Misrepresentations</u>		
\$50-\$500	\$200-\$500	\$100-\$500

(d) The fine for repeated violations shall be the amount of the fine imposed for the initial violation plus the additional amount as indicated in the following schedule:

Development
Standards/
Permit

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<u>Violation Use</u>	<u>Conditions</u>	<u>Misrepresentations</u>
Second \$100	\$100	\$100
Third 200	200	200
Fourth or more 450	300	400

(e) When a violation is not corrected by the deadline specified in the citation, the executive director may assess an additional fine not to exceed \$500 for each day the violation remains uncorrected in accordance with the following schedule:

Number of Days After Deadline to Correct Violation

<u>Violation than 450</u>	<u>1-90</u>	<u>91-180</u>	<u>181-270</u>	<u>271-360</u>	<u>361-450 more</u>
Initial \$500	\$ 50	\$100	\$200	\$300	\$400
Second100	200	300	400	500	500
Third200	300	400	500	500	500
Fourth or more300	400	500	500	500	500

[Eff 10/3/94] (Auth: HRS §§91-2, 206E-4, 206E-22)
(Imp: HRS §§206E-5, 206E-7, 206E-22)

§15-16-95 Right to appeal. Unless otherwise provided in this subchapter, any person served with a notice of violation and citation pursuant to this subchapter may appeal the notice of violation and citation to the authority in accordance with subchapter 7 of chapter 15-16. The appeal must be filed with the authority within thirty (30) days from the date of receipt of the notice. The notice becomes final and not appealable thirty (30) days after its receipt. An appeal to the authority shall not stay any provision of the notice of violation and citation, or the fines imposed thereby. [Eff 10/3/94] (Auth: HRS §§91-2, 206E-4, 206E-22) (Imp: HRS §§206E-5, 206E-7, 206E-22)

§15-16-96 Right to apply for variance. The notice of violation and citation shall advise the violator that variance procedures are available as prescribed in subchapter 5 of chapter 15-16. An application for variance shall not affect, interfere with or postpone any administrative proceedings and penalties initiated under this subchapter. [Eff 10/3/94] (Auth: HRS §§91-2, 206E-4, 206E-22) (Imp: HRS §§206E-5, 206E-7, 206E-22)

§15-16-97 Other legal remedies. (a) The executive director may institute a civil action in any court of competent jurisdiction for the enforcement of any citation issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by said citation, the executive director need only show that the notice of violation and citation was served, that a fine was imposed and the amount of the fine, that the fine imposed has not been paid, that either no appeal or request for variance was made or that an appeal of the citation was upheld by the authority.

(b) The executive director may refer violations to the attorney general's office for criminal prosecution or pursue any other legal means to correct the violations or to collect unpaid fines, or both. [Eff 10/3/94] (Auth: HRS §§91-2, 206E-4, 206E-22) (Imp: HRS §§206E-5, 206E-7, 206E-22)

§15-16-98 Administrative costs. Violators shall be liable for all administrative costs incurred by the authority in processing and levying the penalties set forth in this subchapter. Said costs shall include but not be limited to the cost incurred in the preparation of notices, the collection of fines, and the appeal of violations. [Eff 10/3/94] (Auth: HRS §§91-2, 206E-4, 206E-22) (Imp: HRS §§206E-5, 206E-7, 206E-22)